

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CESAR MENDOZA-HERNANDEZ,

Plaintiff,

v.

JAMES F. SHERMAN, Warden,

Defendant.

C.A. No. 04-204 Erie

MEMORANDUM ORDER

____ Plaintiff's civil rights complaint was received by the Clerk of Court on July 20, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on July 27, 2005, recommended that the Defendant's motion to dismiss the complaint, or in the alternative, for summary judgment [Doc. # 15] be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at FCI McKean, where he is incarcerated, and on the Defendant. No objections were filed. After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 16th Day of August, 2005;

IT IS HEREBY ORDERED that the Defendant's motion [Doc. # 15] to dismiss the complaint, or in the alternative, for summary judgment, is GRANTED.

The report and recommendation of Magistrate Judge Baxter, dated July 27, 2005, is adopted as the opinion of the court.

s/ Sean J. McLaughlin
United States District Judge

cc: all parties of record